

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 228**  
95TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 31, 2009, with recommendation that the Senate Committee Substitute do pass.

1109S.06C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal section 393.135, RSMo, and to enact in lieu thereof sixteen new sections relating to clean energy generation.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 393.135, RSMo, is repealed and sixteen new sections enacted in lieu thereof, to be known as sections 393.135, 393.1250, 393.1253, 393.1256, 393.1259, 393.1262, 393.1265, 393.1268, 393.1271, 393.1274, 393.1277, 393.1280, 393.1286, 393.1289, 393.1292, and 393.1295, to read as follows:

393.135. 1. **Except as provided in subsection 2 of this section and in sections 393.1250 to 393.1295**, any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

2. **The commission may authorize an electrical corporation to make or demand charges for service based in whole or in part on additional amortizations to maintain an electrical corporation's financial ratios that, in the commission's judgment, are designed to assist the electrical corporation in constructing cost-effective baseload generating plants or facilities.**

393.1250. 1. **The provisions of sections 393.1250 to 393.1295 shall be known and may be cited as the "Missouri Clean and Renewable Energy Construction Act". Sections 393.1250 to 393.1295 shall only apply to qualified generating plants or facilities that are placed into commercial operation after August 28, 2009.**

6           2. Where an electrical corporation forms a subsidiary  
7 corporation, limited liability company, partnership, or other entity to  
8 acquire, finance, license, construct, own, operate, maintain, or  
9 decommission an electric generating plant in whole or in part to supply  
10 electricity to the electrical corporation's ratepayers, all capital costs  
11 and expenses incurred by the subsidiary in connection with the  
12 generating plant shall be treated, for all ratemaking and regulatory  
13 purposes, as well as any other purpose pursuant to sections 393.1250 to  
14 393.1295, as if the costs and expenses were incurred directly by the  
15 electrical corporation and as if the plant itself was owned directly by  
16 the electrical corporation. Moreover, for all purposes of the assessment  
17 and levy of property taxes under Missouri law, including chapters 137,  
18 138, 151, and 153, RSMo, the property of a subsidiary of an electrical  
19 corporation owning an electric generating plant as described above  
20 shall be treated as if it were owned by the electrical corporation.

21           3. Nothing in subsection 2 of this section is intended to alter  
22 ownership of the project between the electrical corporation and any  
23 such subsidiary or other entity for any other purpose, including but not  
24 limited to, the granting of any interest in such subsidiary or other  
25 entity of the assets thereof in connection with any financing or  
26 otherwise.

27           4. Within thirty days after the effective date of sections 393.1250  
28 to 393.1295, the commission shall convene a docket to consider the  
29 relative merits of various methods to finance new generating plants  
30 and facilities, including consideration of financing such plants and  
31 facilities without utilization of the provisions of sections 393.1250 to  
32 393.1295, financing such plants and facilities using the additional  
33 amortizations provided for in subsection 2 of section 393.135, financing  
34 such plants and facilities using revised rates under sections 393.1265  
35 and 393.1274, as well as any other method of financing such plants and  
36 facilities or combination thereof. The commission shall issue a report  
37 to the governor and general assembly no later than August 28, 2010.

          393.1253. As used in sections 393.1250 to 393.1295, the following  
2 words and phrases mean:

- 3           (1) "AFUDC", the allowance for funds used during construction  
4 of a facility calculated according to regulatory accounting principles;  
5           (2) "Capital costs" or "facility capital costs", all capital costs

6 including applicable taxes, associated with the design, siting, selection,  
7 acquisition, licensing, construction, testing, and placing into service of  
8 a qualified generating plant or facility, and ancillary facilities, as well  
9 as capital costs incurred to expand or upgrade the transmission grid in  
10 order to connect the generating plant or generating facility to the  
11 transmission grid, under generally accepted principles of regulatory or  
12 financial accounting. This includes all costs described in the Federal  
13 Energy Regulatory Commission's Uniform System of Accounts  
14 Prescribed for Public Utilities and Licensees Subject to the Provisions  
15 of the Federal Power Act, Electric Plant Instructions, as components of  
16 construction cost in 18 CFR Part 101, including AFUDC, and capital  
17 costs associated with facilities or investments for the transportation,  
18 delivery, storage, handling, and disposal of fuel;

19 (3) "Commission", the Missouri Public Service Commission;

20 (4) "Construction work in progress", the electrical corporation's  
21 share of all capital costs as defined in this section associated with a  
22 qualified generating plant or facility, which have been incurred but  
23 have not been included in the electrical corporation's plant in service,  
24 and are recorded in Federal Energy Regulatory Commission's Uniform  
25 System of Accounts Prescribed for Public Utilities and Licensees  
26 Subject to the Provisions of the Federal Power Act, Balance Sheet  
27 Chart Accounts, as construction work in progress for electric plants in  
28 18 CFR Part 101, or any other account established in the Uniform  
29 System of Accounts for the recording of construction work in progress;

30 (5) "Cost of tax capitalized interest" for any period, the sum of all  
31 federal and state income tax for such period attributable to the  
32 disallowance of interest deductions due to tax capitalized interest,  
33 which amount shall include a gross-up for income taxes. The cost of tax  
34 capitalized interest shall be computed using the following formula:  
35 ([tax capitalized interest minus the debt component of AFUDC] times  
36 [the composite federal and state income tax rate used in the electrical  
37 corporation's most recent ratemaking proceeding, as adjusted to reflect  
38 changes, if any, to statutory tax rates applicable to the period]) divided  
39 by (one minus the electrical corporation's composite federal and state  
40 income tax rate);

41 (6) "Expedited rate revisions", a revised schedule of electric rates  
42 and charges reflecting a change to the electrical corporation's then

43 current nonfuel and purchased power rates and charges to add  
44 incremental revenue requirements related to a qualified generating  
45 plant or facility as authorized in sections 393.1250 to 393.1295;

46 (7) "Expedited rate revision proceedings", all proceedings to  
47 consider an application for revised rates or review of a revised rates  
48 order;

49 (8) "Facility review application", an application for a facility  
50 review order;

51 (9) "Facility review order", an order issued by the commission  
52 under section 393.1265;

53 (10) "General rate proceeding", a proceeding before the  
54 commission under section 386.390 or section 393.150, RSMo, and other  
55 applicable provisions for the establishment of new electric rates and  
56 charges, and where orders in general rate proceedings are referenced  
57 in sections 393.1250 to 393.1295, such orders include revised rate orders  
58 issued in proceedings under sections 393.1259 to 393.1280;

59 (11) "In-service expenses", all reasonably projected expenses of  
60 the type recognized under generally accepted principles of regulatory  
61 or financial accounting as a result of a qualified generating plant or  
62 facility commencing commercial operation, including:

63 (a) Expenses associated with operating and maintaining the  
64 facility, as well as taxes and governmental charges, including taxes  
65 other than income taxes, applicable to the facility;

66 (b) Depreciation and amortization expenses related to the  
67 facility;

68 (c) The weighted average cost of capital applied to the electrical  
69 corporation's investment in supplies, inventories, and working capital  
70 associated with the facility; and

71 (d) Other costs determined by the commission to be appropriate  
72 for rate-making purposes, which may include, but are not limited to,  
73 labor, supplies, insurance, general and administrative expenses, and  
74 the cost of outside services;

75 (12) "Person", any individual, group, firm, partnership, company,  
76 or corporation;

77 (13) "Political subdivision", any county or municipality within  
78 this state;

79 (14) "Preconstruction costs", costs associated with a potential

80 qualified generating plant or facility incurred before issuance of a  
81 facility review order, which shall be limited to the costs of contracting,  
82 evaluation, design, engineering, and environmental and geotechnical  
83 analysis and permitting, including early site permitting and combined  
84 construction and operating license permitting from the United States  
85 Nuclear Regulatory Commission;

86 (15) "Project development application", an application for a  
87 project development order;

88 (16) "Project development order", an order issued under section  
89 393.1256;

90 (17) "Prudency", the standard to be used by the commission in  
91 examining the reasonableness of management decisions made by an  
92 electrical corporation, which shall be that of a reasonable person  
93 having knowledge of the pertinent circumstances at the time the  
94 decision was made;

95 (18) "Qualified generating plant or facility", an electrical  
96 generating facility that generates renewable electricity or one that is  
97 designed to be operated at a capacity factor exceeding seventy percent  
98 annually, has a gross initial generation capacity rating of eight  
99 hundred megawatts or more, and is intended in whole or in part to  
100 serve retail customers of an electrical corporation in Missouri, and  
101 approved as part of a plan by the commission with the stated purpose  
102 of reducing carbon emissions;

103 (19) "Revised rates order", an order issued by the commission  
104 under sections 393.1259 to 393.1280 approving, modifying, or denying  
105 the electrical corporation's request to charge revised rates under  
106 sections 393.1250 to 393.1295;

107 (20) "Tax capitalized interest", the interest that is capitalized for  
108 income tax purposes under Section 263A(f) of the Internal Revenue  
109 Code of 1986, as amended, or other provision of federal or state income  
110 tax law;

111 (21) "Weighted average cost of capital" or "cost of capital", the  
112 electrical corporation's average cost of debt and equity capital:

113 (a) Incorporating the:

114 a. Return on equity;

115 b. Electrical corporation's current weighted average cost of debt;

116 and

117 c. Electrical corporation's weighted average cost of preferred  
118 stock;

119 (b) Adjusting subparagraphs a and c of paragraph (a) of this  
120 subdivision for the effect of current income taxes by dividing them by  
121 one minus the composite federal and state income tax rate used in the  
122 electrical corporation's most recent rate making proceeding, as  
123 adjusted to reflect changes, if any, to statutory tax rates applicable to  
124 the period; and

125 (c) Weighting the items described in paragraph (a) in this  
126 subdivision and adjusted in paragraph (b) of this subdivision according  
127 to the electrical corporation's current capital structure for rate making  
128 purposes.

393.1256. 1. The provisions of this section apply to the  
2 preconstruction costs of a qualified generating plant or facility under  
3 sections 393.1250 to 393.1295.

4 2. After August 28, 2009, the commission may include  
5 preconstruction costs associated with a potential qualified generating  
6 plant or facility in an electrical corporation's rate base, if the  
7 commission finds the electrical corporation was prudent and  
8 reasonable in incurring such preconstruction costs as part of a general  
9 rate proceeding. When determining the recovery of tax capitalized  
10 interest with an income tax gross-up or any other issue, the commission  
11 may establish procedures to insure ratepayers pay no more and no less  
12 than necessary to make the electrical corporation whole on an after-tax  
13 cash basis.

14 3. An electrical corporation may file a project development  
15 application with the commission. In evaluating a project development  
16 application, the commission shall determine the prudence of the  
17 decision to incur preconstruction costs for the facility. If, based on a  
18 preponderance of the evidence, the commission determines a project  
19 applied for in a project development application is prudent, the  
20 commission may issue a project development order affirming the  
21 prudence of the electrical corporation's decision to incur  
22 preconstruction costs not already included in the electrical  
23 corporation's rate base as provided for in subsection 2 of this section.

24 4. In determining whether preconstruction costs shall be  
25 reflected in rates, the commission shall decide whether such costs are

26 prudent based on a preponderance of the evidence.

27       5. The commission may disallow preconstruction costs for  
28 imprudence, but only to the extent that a reasonable person, acting on  
29 behalf of the electrical corporation and having knowledge of the  
30 pertinent facts, would have avoided those costs considering the  
31 information available to the electrical corporation at the time the costs  
32 were incurred.

33       6. An electrical corporation may apply to the commission to  
34 abandon a project after preconstruction costs have been included in the  
35 corporation's rate base. The electrical corporation may ask the  
36 commission to determine the rates being charged for the abandoned  
37 project are prudent. In that event, the electrical corporation shall bear  
38 the burden of proving by a preponderance of the evidence that the  
39 decision to abandon the project was prudent and the cost to ratepayers  
40 of abandoning the project at the time the abandonment decision was  
41 made are projected to be less than the cost to ratepayers of completing  
42 the project. Nothing in this subsection shall be construed to limit the  
43 effect of subsection 3 of this section as to a project that is not  
44 abandoned or to projects abandoned under the provisions of subsection  
45 4 of section 393.1268.

46       7. If a portion of a project that is abandoned is owned by a  
47 person, firm, or entity other than the electrical corporation or by a  
48 subsidiary of an electrical corporation as contemplated by subsection  
49 2 of section 393.1250, the electrical corporation may make an  
50 application to the commission to determine whether completion of the  
51 project is prudent and in the public interest.

52       8. The electrical corporation, including any subsidiary, shall be  
53 required to seek commission approval to sell, transfer or encumber any  
54 interest in a qualified generating plant or facility, licensed thereto, or  
55 project authorized pursuant to sections 393.1250 to 393.1295. If an  
56 electrical corporation or a subsidiary sells, transfers or assigns its  
57 interest in a combined construction and operating license, or an  
58 application therefor, from the United States Nuclear Regulatory  
59 Commission applicable to a qualified generating plant or facility, and  
60 if any costs associated with such combined construction and operating  
61 license, or application therefor, have been included in the electrical  
62 corporation's rate base as of the time of such a sale, then the

63 commission shall prescribe how the sums paid by the ratepayers  
64 arising from the inclusion of such costs in the electrical corporation's  
65 rate base shall be refunded to ratepayers after the sale proceeds are  
66 received, including interest at the electrical corporation's short-term  
67 borrowing rate, pursuant to section 393.1295.

68 9. At any time after an initial project development order has  
69 been issued, the electrical corporation may file an amended project  
70 development application to determine the prudence of any decision  
71 related to the facility.

72 10. In any commission proceeding where an electrical  
73 corporation files a complete application for a project development  
74 order or an amended project development order, the commission shall  
75 issue an order deciding all issues within one year of the date of the  
76 filing of the project development order application.

77 11. Prudence determinations under this section shall be final and  
78 not subject to further review in any future commission proceedings.

393.1259. The commission shall establish the initial filing  
2 requirements for a facility review order under sections 393.1259 to  
3 393.1280 no later than September 1, 2010, and may amend those  
4 requirements at any later date.

393.1262. An electrical corporation may file a facility review  
2 order application with the commission after the electrical corporation  
3 has received all necessary licenses and permits for the qualified  
4 generating plant or facility.

393.1265. 1. The commission may, after conducting a hearing,  
2 issue a facility review order approving rate recovery for the qualified  
3 generating plant or facility capital costs if it determines that the  
4 electrical corporation's decision to proceed with construction of the  
5 facility is prudent and reasonable considering the information  
6 available to the electrical corporation at the time.

7 2. The commission shall decide all issues listed by the electrical  
8 corporation in its application for a facility review order no later than  
9 eleven months from the date of filing. The commission may require  
10 quarterly expedited rate revisions as part of the facility review order  
11 and such order shall be binding on future commissions until the  
12 construction of the qualified generating plant or facility is complete  
13 and all prudently incurred capital costs and expenses associated with

14 the plant are recovered in rates.

15           3. An electrical corporation may request expedited rate revisions  
16 reflecting the electrical corporation's current investment in the facility  
17 and the commission shall determine just and reasonable rates using  
18 criteria previously established by the commission or by using all the  
19 factors, allocations and rate designs as determined in the electrical  
20 corporation's last rate order.

21           4. An electrical corporation may petition the commission in a  
22 new docket for an order modifying any part of a facility review order  
23 issued under this section. The electrical corporation shall have the  
24 burden of proving the relief requested is:

- 25           (1) For good cause;  
26           (2) Prudent; and  
27           (3) Just and reasonable under the circumstances.

28 If the commission determines the electrical corporation has met its  
29 burden of proof, the commission shall grant the relief requested.

          393.1268. 1. Once the commission issues a facility review order,  
2 the facility review order constitutes a final and binding determination  
3 that the costs of a qualified generating plant or facility are properly  
4 includable in rates as and when they are incurred, and are prudently  
5 incurred so long as the facility is constructed, or is being constructed,  
6 within the parameters of:

- 7           (1) The approved construction schedule including contingencies;  
8 and  
9           (2) The approved capital cost estimates including contingencies.

10           2. So long as the facility is constructed or is being constructed  
11 in accordance with the approved schedules, estimates, and projections  
12 set forth in a facility review order, as adjusted by the inflation indices  
13 adopted by the facility review order, an electrical corporation shall be  
14 allowed to recover its capital costs related to the facility through  
15 expedited revised rate reviews or general rate proceedings.

16           3. Based on a preponderance of the evidence, the commission  
17 may disallow capital costs to the extent that the failure by the  
18 electrical corporation to avoid the deviation, or to minimize the  
19 resulting expense, was imprudent considering the information available  
20 at the time that the electrical corporation could have acted to avoid the  
21 deviation or minimize its effect. Significant weather delays, natural

22 disasters, changes in supplier costs, unavailability of supply of  
23 equipment, labor or materials, regulatory changes, or other factors  
24 beyond the electrical corporation's control shall not result in any  
25 disallowance of costs.

26 4. If any provision of section 393.135 or sections 393.1250 to  
27 393.1295 that affects an electrical corporation's ability to recover  
28 capital costs, including AFUDC thereon, for a project involving a  
29 qualified generating plant or facility is abrogated, repealed, materially  
30 amended or limited by subsequent action of the general assembly,  
31 initiative petition, constitutional amendment, or judicial decision  
32 before a facility review order has been issued, an electrical corporation  
33 may abandon the project and seek recovery of its proportionate share  
34 of capital costs, including AFUDC, incurred by the electrical  
35 corporation in reliance on the provisions of section 393.135 or sections  
36 393.1250 to 393.1295 through general rate proceedings.

37 5. If the commission adopts a facility review order for a qualified  
38 generating plant or facility prior to the time any such provision of  
39 sections 393.1250 to 393.1295 is abrogated, repealed, materially  
40 amended, or limited by subsequent action of the general assembly,  
41 initiative petition, constitutional amendment, or judicial decision, the  
42 electrical corporation shall be permitted to recover its expenses  
43 through the commission-authorized rates as if no abrogation, repeal,  
44 material amendment, or material limitation had occurred.

393.1271. 1. The commission may require an electrical  
2 corporation to file periodic reports with the commission as part of a  
3 facility review order and may prescribe information to be provided in  
4 those reports.

5 2. The commission shall monitor the construction of the qualified  
6 generating plant or facility and expenditure of capital through review  
7 and audit of reports under this section, and shall have the right to  
8 inspect the books and records regarding the plant or facility and the  
9 physical progress of construction.

393.1274. 1. In the event the commission does not prescribe a  
2 manner for expedited rate revisions, an electrical corporation may file  
3 with the commission requests for the approval of expedited rate  
4 revisions three months after issuance of a facility review order and  
5 every three months thereafter. Expedited rate revisions made by the

6 commission shall include the electrical corporation's additional  
7 investment in the facility reflected on the accounting books and  
8 records of the electrical corporation that were not previously included  
9 in rates.

10 2. In the event the commission does not prescribe a different  
11 means of calculating revised rate increases as part of the facility  
12 review order under subsection 3 of section 393.1265, or for additional  
13 revised rates implemented under a request made under subsection 1 of  
14 this section, an electrical corporation shall be allowed to recover  
15 through revised rates by adding:

16 (1) Its weighted average cost of capital applied to the  
17 outstanding balance of construction work in progress, including  
18 construction work in progress arising from preconstruction costs that  
19 have not previously been included in the electrical corporation's rate  
20 base; and

21 (2) Its cost of tax capitalized interest.

22 The commission shall prescribe how these expenses shall be stated on  
23 customers' bills.

24 3. Expedited rate revisions approved under subsection 3 of  
25 section 393.1265 as part of the issuance of the facility review order, and  
26 expedited rates filed under subsection 1 of this section, shall become  
27 effective fourteen days after the filing of rate schedules reflecting the  
28 new rates to be charged to each rate class. Such rates shall be  
29 collected by the electrical corporation on an interim basis subject to  
30 refund as provided for in subsection 6 of this section. Any construction  
31 work in progress for which the weighted average cost of capital is not  
32 being recovered through revised rates shall continue to earn AFUDC  
33 and may be included in rates through future filings. Expedited rate  
34 revisions filings under subsection 1 of this section shall include the  
35 most recent monitoring report filed under subsection 1 of section  
36 393.1271 updated to reflect information current as of the date specified  
37 in the filing. For expedited rate revisions filings under subsection 1 of  
38 this section, the commission shall provide notice of the revised rate  
39 filings to all parties to the electrical corporation's facility review  
40 application proceeding and permit the intervention of any party filing  
41 an application for intervention within two weeks of the filing if such  
42 a party meets the standard for intervention contained in the

43 commission's rules. The commission shall not extend any other dates  
44 contained herein.

45       4. The commission staff shall review and audit the revised rates  
46 filed under subsection 1 of this section or subsection 3 of section  
47 393.1265 and the information supporting such rates to determine if the  
48 revised rates were calculated in accordance with the facility review  
49 order. No later than three months after the date of expedited rate  
50 review filings, the commission staff shall file with the commission and  
51 serve on all parties of record a verified report indicating the results of  
52 its review and audit, propose any changes to the expedited rate  
53 revisions filing or the information supporting them that the commission  
54 staff determines to be necessary to comply with the terms of the facility  
55 review order.

56       5. The commission may prescribe procedures for receiving  
57 written and oral comments related to the report. The commission staff  
58 may revise its report considering comments filed.

59       6. Within six months of a expedited revised rate revision filing,  
60 the commission shall enter an order deciding the issues in accordance  
61 with the facility review order, or specifying any variance between the  
62 expedited rates established and the facility review order. If expedited  
63 rate revisions are requested in connection with the issuance of the  
64 facility review order, the commission shall enter an order respecting  
65 revised rates within the deadline established under subsection 2 of  
66 section 393.1265 for granting or denying the facility review order  
67 application. In the event the commission fails to issue an order  
68 deciding any expedited rate revisions filing request by the prescribed  
69 deadline, the revised rates filed by the electric company shall be  
70 deemed final, and no longer subject to refund, subject, however, to the  
71 final audit provisions of subsection 10 of this section. If the  
72 commission determines the electrical corporation recovered revenues  
73 above those authorized by a facility review order, the electrical  
74 corporation shall credit customer's bills for the excess recovery over  
75 the following four monthly billing cycles, with interest at the electrical  
76 corporation's short-term borrowing rate.

77       7. The electrical corporation seeking a rate increase through an  
78 expedited rate revisions filing shall promptly provide notice of any  
79 proposed increase to its customers in a manner prescribed by the

80 **commission.**

81 **8. Other provisions of this section notwithstanding, the electrical**  
82 **corporation may file a final set of revised rates for the facility to go**  
83 **into effect upon commercial operation of the facility, the filing to be**  
84 **made no sooner than seven months before the projected date that the**  
85 **facility is to commence commercial operations. In the final revised**  
86 **rates, the electrical corporation may include recovery of the weighted**  
87 **average cost of capital applied to the actual capital costs associated**  
88 **with the facility and projected capital costs through the end of the**  
89 **period of construction of the facility that have not previously been**  
90 **included in rates. Rate adjustments to reflect the revenue requirement**  
91 **related to in-service expenses shall be included in the final revised**  
92 **rates and shall be based on the electrical corporation's most current**  
93 **budget estimates of those expenses for the succeeding twelve-month**  
94 **period at the time the final revised rates are filed or actual expenses,**  
95 **if available. The final revised rates filing shall be processed in the**  
96 **same manner and fashion as other revised rates filings made under**  
97 **subsection 1 of this section.**

98 **9. If an electrical corporation decides to abandon the project**  
99 **after a facility review order approving expedited rate revisions for the**  
100 **project has been issued, then the capital costs related to the project,**  
101 **whether incurred before or after the effective date of sections 393.1250**  
102 **to 393.1295, shall nonetheless be recoverable, provided that as to the**  
103 **decision to abandon the project, the electrical corporation shall bear**  
104 **the burden of proving by a preponderance of the evidence that the**  
105 **decision was prudent and that the cost to ratepayers of abandoning the**  
106 **project at the time the abandonment decision was made are projected**  
107 **to be less than the cost to ratepayers of completing the**  
108 **project. Without limiting the effect of subsection 1 of section 393.1268**  
109 **as to a facility that is not abandoned, recovery of capital costs may be**  
110 **disallowed as a result of abandoning a facility only to the extent that**  
111 **the failure by the electrical corporation to avoid the allegedly**  
112 **imprudent costs, or to minimize the magnitude of the costs, was**  
113 **imprudent considering the information available at the time that the**  
114 **electrical corporation could have acted to avoid or minimize the**  
115 **costs. The commission may order the amortization and recovery of the**  
116 **capital costs of the abandoned facility as part of an order adjusting**

117 rates under this section or in a general rate proceeding for the  
118 electrical corporation. The commission's order shall provide that the  
119 unamortized capital costs shall bear interest at the electrical  
120 corporation's AFUDC rate, and shall be fully amortized within a period  
121 not to exceed one and one-half times the period during which the costs  
122 that are the subject of the amortization were incurred. If a portion of  
123 the project that is abandoned is owned by a person, firm, or entity  
124 other than the electrical corporation or by a subsidiary of an electrical  
125 corporation as contemplated by subsection 2 of section 393.1250, only  
126 that portion of the construction costs, with AFUDC thereon, that are  
127 associated with the electrical corporation's or its subsidiary's  
128 ownership interest in the project shall be recovered by the electrical  
129 corporation hereunder.

130       10. After completion of a facility subject to a facility review  
131 order, the commission staff shall conduct an audit of the electrical  
132 corporation's revenues, expenses, and rates. The audit shall be based  
133 on a twelve-month test period ending no later than December thirty-  
134 first of the calendar year following the year in which the facility  
135 entered commercial operation and shall be filed within four months of  
136 the conclusion of the test period. The sole purpose of the audit shall be  
137 to determine if the costs actually recovered through all revised rates  
138 orders equal the actual capital costs for the new facility and the in-  
139 service expenses. Any over-recovery or under-recovery determined by  
140 the commission to have existed shall be credited to or recovered from  
141 ratepayers, as the case may be, through subsequent bill credits or  
142 surcharges, with interest at the utility's short-term borrowing rate.

393.1277. 1. The provisions of this section and section 393.1280  
2 shall supplement the provisions of section 386.500, RSMo, and shall  
3 control to the extent inconsistent with section 386.500, RSMo. Within  
4 the time allowed for seeking rehearing of a commission order under  
5 section 386.500, RSMo, after issuance of a revised rates order under  
6 section 393.1265 or 393.1274, or within thirty days of the failure by the  
7 commission to issue a revised rates order as required under subsection  
8 6 of section 393.1274, any aggrieved party may apply to the commission  
9 for rehearing of the revised rates order or of the failure to issue a  
10 revised rates order.

393.1280. 1. Proceedings under this section are limited to issues

2 related to whether the revised rates filed by the electrical corporation  
3 comply with the terms of the commission order issued under section  
4 393.1265 and with the specific requirements of section 393.1274. Other  
5 matters determined in orders issued under sections 393.1256 to 393.1280  
6 or in a general rate proceeding are not subject to review in proceedings  
7 under this section or section 393.1277.

8       2. If the final order increases the amount of capital costs which  
9 the electrical corporation may recover through revised rates, the  
10 AFUDC booked on those capital costs between the issuance of the  
11 revised rates order and the final order shall remain on the books of the  
12 electrical corporation and shall not be reversed or  
13 adjusted. Surcharges related to under collection of costs shall be  
14 calculated without consideration of AFUDC amounts recognized on the  
15 capital costs during this period.

16       3. If the final order reduces the amount of capital costs which  
17 the electrical corporation may recover through revised rates for  
18 reasons other than the conclusive finding that the capital costs were  
19 imprudently incurred, then the electrical corporation may resume  
20 accrual of AFUDC on any capital costs that were not included in  
21 expedited rate revisions and may book an amount of AFUDC equal to  
22 the AFUDC not recognized during the time the rates approved in the  
23 revised rates order were in effect.

393.1286. 1. Except as otherwise specified in sections 393.1250 to  
2 393.1295, all procedural requirements that apply to general rate  
3 proceedings by law or regulation shall apply to proceedings under  
4 sections 393.1250 to 393.1295, and to the judicial review of orders issued  
5 under sections 393.1250 to 393.1295. The requirements related to the  
6 form and content of filings to initiate general rate proceedings shall  
7 only apply, however, to proceedings that are combined with a general  
8 rate proceeding.

9       2. As to proceedings under sections 393.1250 to 393.1295 that are  
10 combined with a general rate proceeding, the procedural requirements  
11 related to general rate proceedings shall apply to the extent not  
12 inconsistent with sections 393.1250 to 393.1295.

13       3. In proceedings under sections 393.1250 to 393.1295, the  
14 electrical corporation shall have the burden of proving the prudence  
15 of its decision to incur preconstruction costs under section 393.1256

16 and to establish the appropriateness of a facility review order under  
17 section 393.1268.

18 4. Commission determinations under sections 393.1256 and  
19 393.1268 shall not be challenged, reopened, or reviewed in any  
20 subsequent commission proceeding, including in any general rate  
21 proceeding, except that, the public counsel or any corporation or  
22 person or public utility interested therein shall have the right to  
23 challenge such determinations via an application for rehearing of the  
24 order making such determinations under section 386.500, RSMo.

393.1289. Courts of this state shall have the power to review  
2 commission determinations made under sections 393.1256 and 393.1268  
3 in proceedings under sections 386.510 and 386.540, RSMo; provided that  
4 no court of this state shall have jurisdiction to hear or determine any  
5 issue, case, or controversy concerning any matter which was or could  
6 have been determined in a proceeding before the commission.

393.1292. Notwithstanding any other provision of law, no state  
2 or regional agency, or political subdivision or other local government  
3 may require any approval, consent, permit, certificate or other  
4 condition for the construction, operation, or maintenance of a qualified  
5 generating plant or facility authorized by a certificate of public  
6 convenience and necessity issued by the commission, except that the  
7 department of natural resources may require permits in accordance  
8 with applicable state statutes, rules, regulations, or standards  
9 promulgated within its authority and within its delegated federal  
10 authority.

393.1295. 1. If, prior to a qualified generating plant or facility  
2 being fully operational and used, an electrical corporation sells or  
3 transfers a license or permit associated with such plant or facility, or  
4 sells or transfers the qualified generating plant or facility itself, the  
5 commission shall require that any proceeds related to such sale or  
6 transfer be refunded to ratepayers with interest, to the extent any costs  
7 incurred by the corporation to develop the license, permit, plant, or  
8 facility have been recovered in rates.

2. Any proceeds related to an electrical corporation from the sale  
10 or transfer of a license or permit associated with a qualified generating  
11 plant or facility or the sale or transfer of a qualified generating plant  
12 or facility, other than a sale or transfer addressed in subsection 1 of

13 **this section, shall be treated by the commission as proceeds from the**  
14 **sale or transfer of used and useful assets.**

✓

Unofficial

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